

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/563,207  
Applicant : Michael A. LEVY  
Filed : June 30, 2006  
TC/A.U. : 1625  
Examiner : Binta M. Robinson

Docket No. : 3165-140  
Customer No. : 6449  
Confirmation No. : 8175

**PETITION TO CORRECT PATENT TERM ADJUSTMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicants request that the Office revise, if necessary, the Patent Term Adjustment (PTA) calculated in connection with the above-identified now allowed U.S. Patent Application. The number of days calculated by the Office was 213 based on a 35 U.S.C. 371 date of June 30, 2006. However, Applicant's representative filed a declaration signed by the inventor, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date on April 19, 2006. A PTO date stamped postcard acknowledging receipt of the application declaration was received by us for the April 19, 2006 submission. On May 1, 2006, the Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 in which the only requirement identified as missing was the inventor's declaration. On June 30, 2006, Applicant's representative responded to the Notification of Missing Requirements under 35 U.S.C. 371 by submitting a copy of the same inventor

declaration and a copy of the PTO postcard dated April 19, 2006 and requested that the Notification be withdrawn. This declaration, which was identical to the April 19, 2006 submission, was accepted on May 1, 2007. However, the application was given a 371 date of June 30, 2006. Applicant believes that the application deserves the benefit of the April 19, 2006 date because all requirements under 35 U.S.C. 371 were met on that date.

Therefore, the patent term adjustment should be calculated from the April 19, 2006 date which would increase the calculated patent term adjustment to 285 days under 37 C.F.R. § 1.703.

**371 date** = April 19, 2006

**14 month date** = June 19, 2007

**Three year date** = April 19, 2009

**First Office Action** = March 24, 2008

**US PTO Delays** = 279 + 23 = 302 days

**Applicant delay** = 17 days (calculated by PTO)

**Total PTA** = US PTO Delay – Applicant Delay = 302-

17 = **285 days**<sup>1</sup>.

Therefore, Applicant requests appropriate correction of the PTA. Authorization is hereby given to charge any fee deemed necessary in connection with the filing of this paper, or credit any overpayment, to Deposit Account No. 02-2135.

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<sup>1</sup> Because this application will issue after March 2, 2010, Applicants expect that the PTA will be further adjusted based on the recent decision in *Wyeth v. Dudas*, and it is therefore unnecessary to raise that issue in this petition.

Respectfully submitted,

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